

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

Applicant appreciates the courtesies extended to the Applicant's representative during the November 7, 2005 personal interview. The substance of the discussions held are incorporated into the amendments and following remarks and constitute Applicant's record of the interview.

Claims 1 and 3-9 are pending in this application. By this amendment, the Abstract is replaced with a substitute Abstract, Claim 2 is canceled; Claims 1 and 3-8 are amended and new Claim 9 is added. No new matter is introduced by any of the amendments.

The outstanding Office Action includes an objection to the Abstract, an objection to Claims 4-8, a rejection of Claim 3 under 35 U.S.C. §112, first paragraph, a rejection of Claims 2 and 3 under 35 U.S.C. §112, second paragraph and a rejection of Claims 1-3 under 35 U.S.C. §102(b) over U.S. Patent 2,738,975 to Zaboy.

The objection to the Abstract is believed to be overcome by the present Amendment which replaces the Abstract with a substitute Abstract. With respect to the rejection of Claim 3 under 35 U.S.C. §112, first paragraph, Applicants believe that the specification clearly describes at page 2, line 8 that the bench includes areas characterized by different surface qualities, the area inclined downwards having a surface of low (smooth) friction whereas in the upper zone the surface is of high friction.

With respect to the rejection of Claims 2 and 3 under 35 U.S.C. §112, second paragraph, the Office Action asserts the claims are indefinite because the Applicant is claiming a structure in comparison to a human being. Furthermore, the Office Action asserts that a human can't be claimed as being part of an invention. Applicant notes that 35 U.S.C. §112, second paragraph relates to particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his invention. Thus, 35 U.S.C. §112, second paragraph

is directed to whether or not claims are precise, clear, correct and unambiguous. Applicant believes that a proper rejection based on claiming a human as part of an invention is made under 35 U.S.C. §101. See, e.g., M.P.E.P. §2105. With respect to Claim 2, this rejection is moot. Claim 3 is amended to obviate this rejection.

Before considering the rejection under 35 U.S.C. §102(b), it is believed that a brief review of the subject matter of independent Claim 1 would be helpful.

In this regard, Claim 1 is directed to an orthopaedic bench to improve the therapeutic condition of a user's spine or back by decompression. The dimensions of the bench are adjusted to the size of the user. The bench includes a resting member having a surface on which the user lies supine. The surface has a longitudinal axis which extends at an incline from a first lower end to a second upper end. The surface is curved. A supporting member is provided to support the resting member on a plane on which the bench is placed. The supporting member has a height adjusted to the size of a user so that if a user lies on the bench with his head placed at the first lower end and his feet placed on the plane, the user's knees are bent and at a higher position than the user's spine or back relative to the plane.

Turning to the rejection of Claim 1 under 35 U.S.C. §102(b) as being unpatentable over Zaboy, the dimensions of the bench of Claim 1 have to be chosen carefully, specifically dependent on a specific size of the user. For example, the bench for a child must be smaller than the bench for an adult. Nevertheless, the shape of the bench, particularly the curvature of the height thereof, are chosen such that the knees of a potential user are at a higher position than the user's spine, when the user is lying supine, i.e., head downward.

The bench of Claim 1 improves the condition of the spine and back with an optimal combination of gentle decompression. The user lying supine on the bench does not have to make any effort except to simply lie on the bench. In such a position, the user's body as such

exerts, by its weight, a gentle tensile action on the spine. The tension is affected by gravity which favors the decompression of the spine.

Zaboy discloses a bench including a resting member having a surface, and a supporting member supporting the resting member. The surface of the supporting member has a height. However, Zaboy does not disclose or suggest a supporting member having a height relative to a plane on which the bench is to be put which is chosen so that a user, if the user lies supine on the bench, can put his feet on the plane, while the user's knees are bent and at a higher position than the user's spine or back.

Instead, Zaboy discloses in Figure 1, a bench on which the user also lies supine, a flexible strap is provided for engagement with the user's feet. The bench of Zaboy is intended to help a user relax and rest so that the health of the user will be improved. In use, the user's feet are engaged in the strap 26 and the person can either lie on the curved bench, as shown in Figure 1, or do exercises thereon. See column 2, lines 9-14.

The bench of Zaboy, therefore is for relaxation and exercise, but not for decompression. It has a curved flow. By design, it forces the legs straight which obviates and prevents its potential in the sense of decompressing the spine. In fact, due to the legs being straight, it may actually stress the back. However, in order to effect a decompression along the length of the spine, knees should be bent and above the plane as in Claim 1.

The bench of Claim 1 helps to relieve the discomfort and pain in the back caused by work, travel, shopping and even exercising by letting the spine gently decompress. This in turn adds to relieving muscles, nerves and joints from pressure, while improving circulation to those same areas. Natural gravity is used by way of a gentle incline. There is no stress on the ankles or neck of the user. According to the invention of Claim 1, a user can lie completely free on the bench without the feet being arrested by a strap. The force which is responsible for the relaxation of the spine is a result of the weight of the body of the user.

According to the bench of Claim 1, the legs of the user are in a completely relaxed position and no stress is exerted thereon. Zaboy does not allow the user to have their knees in a higher position than the spine. Thus, Zaboy does not disclose the height of the supporting member being adapted to the size of the user so that if the user lies on the bench with his head oriented to the first lower end and has his feet on the plane, a user's knees are bent and at a higher position than the user's spine or back relative to the plane.

With respect to new independent Claim 9, Zaboy does not disclose a second portion adapted to accommodate a user's buttocks and located along the longitudinal axis of the surface of a second upper end. Instead, in Zaboy the portion adapted to accommodate a user's buttocks is located at a center portion.

As no further issues are believed to remain outstanding in the present application, it is believed that this application is clearly in condition for formal allowance and an early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,

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